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In re Application of KRAENZLER et al :
U.S. Application No.: 10/564,668 :
PCT Application No.: PCT/DE2004/002131 : DECISION
Int. Filing Date: 24 September 2004 :
Priority Date Claimed: 08 November 2003 :
Attorney Docket No.: 3437 :
For: TOOL HOLDING FIXTURE :

This is in response to the papers filed 13 January 2006, which is being treated as a request for status under 37 CFR 1.42.

BACKGROUND

On 24 September 2004, applicant filed international application PCT/DE2004/002131, which claimed priority of an earlier Germany application filed 08 November 2003. A copy of the international application was communicated to the USPTO from the International Bureau on 02 June 2005. The thirty-month period for paying the basic national fee in the United States expired on 08 May 2006.

On 13 January 2006, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1) and an executed declaration.

DISCUSSION

The declaration states that joint inventor Markus Heckmann is deceased.

37 CFR 1.42 provides, "In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent."

Effective 07 November 2000, 37 CFR 1.497(b)(2) specifies that, where a person making the declaration is the legal representative of a deceased inventor, the declaration shall state the following: (1) the relationship of the person to the inventor, (2) the facts the inventor would have

been required to state, upon information and belief, (3) that the person is the legal representative of the deceased inventor, and (4) the citizenship, residence, and mailing address of the legal representative.

The declaration filed 13 January 2006 is not executed by the legal representative of the deceased inventor.

Additionally, the declaration lists two inventors, Christof Hoelzl and Johann Huber, who are not listed in the published international application.

37 CFR 1.497(d) (effective 07 November 2000) states,

If the oath or declaration filed pursuant to 35 U.S.C. 371(c)(4) and this section names an inventive entity different from the inventive entity set forth in the international application, the oath or declaration must be accompanied by: (1) a statement from each person being added as an inventor and from each person being deleted as an inventor that any error in inventorship in the international application occurred without deceptive intention on his or her part; (2) the processing fee set forth in 37 CFR 1.17(i); and (3) if an assignment has been executed by any of the original named inventors, the written consent of the assignee (see §3.73(b) of this chapter).

None of the requirements under 37 CFR 1.497(d) have been satisfied.

CONCLUSION

For the reasons above, the request for status under 37 CFR 1.42 is DISMISSED without prejudice.

If reconsideration on the merits of the request is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Extensions of time are available under 37 CFR 1.136(a). Any reconsideration request should include a cover letter entitled "Renewed Request for Status Under 37 CFR 1.42".

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision, including preparation and mailing of a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that a properly executed oath or declaration in compliance with 37 CFR 1.497 must be filed.

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